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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

FELIX BAUM, On Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

v.

J-B Weld Company, LLC, a Georgia  
company,

Defendant.

Case No.:

**CLASS ACTION COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR  
COMPETITION LAW, Business and  
Professions Code §17200 *et seq.*;
2. VIOLATION OF THE  
CONSUMERS LEGAL REMEDIES  
ACT, Civil Code §1750 *et seq.*; and

DEMAND FOR JURY TRIAL

1 Plaintiff Felix Baum brings this action on behalf of himself and all others  
2 similarly situated against Defendant J-B Weld Company, LLC, and states:

3 **FACTUAL ALLEGATIONS**

4 1. Defendant is a leading manufacturer of cold weld products. It offers  
5 steel-reinforced epoxy putty adhesives/sealants; hole and crack sealants for radiators,  
6 water jackets, and cylinder heads; and MarineWeld, a water-and weather-proof  
7 product for maintaining and repairing various boating and marine products. The  
8 company's products are used for home, auto, motorcycle, mechanical, boats and  
9 marine, plumbing, aircraft, construction, petroleum, sheet metal, and agricultural, as  
10 well as used in public utilities, and factories and foundries. The J-B Weld brand was  
11 established over 50 years ago, such that J-B Weld is a familiar household name to  
12 American consumers. This lawsuit concerns 39 of Defendant's products: (1) J-B  
13 Weld Twin Tube; (2) J-B Weld Windshield Saver; (3) J-B Weld LeatherWeld; (4) J-  
14 B Weld TankWeld; (5) J-B Weld Radiator Weld; (6) KwikWeld Twin Tube; (7)  
15 KwikWeld Syringe; (8) ClearWeld Syringe; (9) WaterWeld Epoxy Putty; (10)  
16 SteelStik Epoxy Putty Stick; (11) Plastic Bonder Syringe; (12) PlasticWeld Syringe;  
17 (13) PlasticWeld Epoxy Putty; (14) MarineWeld Twin Tube; (15) MarineWeld  
18 Syringe; (16) HighHeat Epoxy Putty; (17) AutoWeld; (18) Black Silicone; (19) Blue  
19 Silicone; (20) Clear Silicone; (21) Ultimate Black Silicone; (22) Ultimate Grey  
20 Silicone; (23) Hi-Temp Red Silicone; (24) White Silicone; (25) Perma-Lock Blue  
21 Threadlocker; (26) Perma-Lock Penetrating Threadlocker; (27) Perma-Lock Red  
22 Threadlocker; (28) SuperWeld; (29) KwikWood Epoxy Putty; (30) Wood Restore  
23 Liquid Hardener; (31) Wood Restore Premium Liquid Epoxy Kit; (32) WoodWeld  
24 Twin Tube; (33) WoodWeld Syringe; (34) MinuteWeld Syringe; (35) Perm-O-Seal;

(36) Premium Epoxy Putty Kit; (37) Water Pump & Thermostat Housing; (38) J-B Plastic Bonder Syringe; and (39) J-B ExtremeHeat (collectively, the “Products”)<sup>1</sup>.

2. Defendant’s Products include, without limitation, the epoxy or other adhesive material itself, the tubes, pots, or pouches that house the epoxy or other adhesive material, the caps that seal the Products, and the nozzles, syringes, and spatulas that dispense the epoxy or adhesive material.

3. The Products are sold online and in virtually every major automotive, hardware, home improvement, farm, and big-box store nationwide including, but not limited to Ace Hardware, Auto Zone, The Home Depot, Pep Boys, Wal-Mart, Fred Meyer, Lowe’s, O’Reilly Auto Parts, K-Mart, and Parts Plus. The Products retail for approximately \$7.99-\$35.99.

4. On the front of each and every Product package, where consumers cannot miss it, Defendant represents that the Products are “Made in U.S.A.” directly under a picture of the American flag set against a contrasting background to attract attention. A representative example of the “Made in U.S.A.” representation is shown below:



Defendant also represents that the Products are “Made in U.S.A.” on the back of the Product packages. The “Made in U.S.A.” representations are false, misleading, and deceptive because the Products are not “all or virtually all” made in the United States as required and defined by the Federal Trade Commission Act, 15 U.S.C. §§ 45 and

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<sup>1</sup> Plaintiff reserves the right to add additional products upon completion of discovery.

1 45a. Specifically, the Products contain more than a “de minimis, or negligible,”  
2 amount of foreign content, including, without limitation, the tubes that house the  
3 adhesives, the caps that seal the Products, and the nozzles and syringes that dispense  
4 the Products. Representative copies of three Product packages, including a  
5 representative copy of the J-B Weld Twin Tube Product package purchased by  
6 Plaintiff, which are representative of all Product packages, are attached hereto as  
7 Exhibit A.

8 5. The “Made in U.S.A.” representations are a central aspect of  
9 Defendant’s marketing campaign and brand recognition. Defendant not only  
10 prominently represents that the Products are Made in U.S.A.” on every Product  
11 package, but it states in a position of prominence in the very first paragraph of its  
12 company website “About J-B Weld” page that its Products “have always been made  
13 in the USA.” <https://www.jbweld.com/pages/about>.

14 6. Defendant’s “Made in U.S.A.” representations, to which all consumers  
15 are necessarily exposed, are stand-alone representations without qualification or  
16 disclosures such as “Made in U.S.A. of U.S. and imported parts”, “Partially Made in  
17 U.S.A.”, or “Made in U.S.A. – Certain parts foreign”, leading reasonable consumers  
18 to believe the epoxy/adhesive materials, packaging, and all components of the  
19 Products – each of which is an integral part of the Products’ functionality – are “all  
20 or virtually all” made in America.

21 7. Where a product is not “all or virtually all” made in the U.S. and bears  
22 a U.S. origin claim – such as Defendant’s Products – consumers expect clear,  
23 prominent, and understandable accompanying qualification and disclosure of the  
24 kind often seen on other products in the marketplace that bear qualified U.S. origin  
25 claims, such as “Made in Germany. Packaged in USA” or “Assembled in USA with  
26 U.S. and imported parts”.

1           8. Defendant possesses superior knowledge of the true origin of its  
2 Products. Consumers are not privy to this information, nor is it generally available  
3 in the public domain. By failing to properly qualify its “Made in U.S.A.”  
4 representations and disclose that certain component parts of its Products were  
5 imported, Defendant deceived, defrauded, and misled consumers.

6           9. Defendant’s unqualified “Made in U.S.A.” representations and failure  
7 to disclose its Products contain imported parts is material to consumers of  
8 Defendant’s Products.

9           10. And consumers are not only increasingly seeking out products that are  
10 made in America, but they are willing to pay more for them.

11           11. Consumers’ preference for American-made goods and their willingness  
12 to pay more for domestically made products stems from a belief in superior  
13 workmanship, a desire to support American jobs, and a distaste for products made in  
14 “sweatshops”, among other reasons.

15           12. In addition to being false, misleading, and deceptive, Defendant’s  
16 conduct is unlawful as it violates California Business & Professions Code § 17533.7,  
17 which prohibits the sale in California of products bearing the representation “Made  
18 in U.S.A.” if “any article, unit, or part thereof has been substantially made,  
19 manufactured, or produced outside of the United States.”

20           13. Defendant has also violated the Federal Trade Commission Act, 15  
21 U.S.C. §§ 45 and 45a, and the principles set forth in the FTC’s Enforcement Policy  
22 Statement on U.S. Origin Claims issued pursuant to the Commission’s authority to  
23 regulate U.S. origin claims under Section 5 of the FTC Act, 15 U.S.C. § 45, which  
24 prohibits “unfair or deceptive acts or practices”, wherein it is deemed deceptive and  
25 therefore unlawful to make a “Made in U.S.A.” claim when the product – including  
26 its raw materials, containers, dispensers, and other component parts – is not “all or  
27 virtually all” made in the U.S.



1 marketing within this State, including this District, to render the exercise of  
2 jurisdiction by this Court permissible.

3 19. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)  
4 because a substantial part of the events giving rise to Plaintiff's claims occurred while  
5 he resided in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a)  
6 because Defendant transacts substantial business in this District.

### 7 **PARTIES**

8 20. Plaintiff Felix Baum resides in San Francisco, California, is domiciled  
9 in San Francisco, California, and is a citizen of California. Throughout the relevant  
10 period, Plaintiff routinely was exposed to, saw, and relied upon Defendant's "Made  
11 in U.S.A." representations by reading the front and back of the J-B Weld Twin Tube,  
12 J-B Weld Radiator Weld, PlasticWeld Syringe, and Black Silicone Product labels.  
13 Plaintiff purchased the Products at various stores in San Francisco, California in  
14 reliance on the "Made in U.S.A." representations. Had Plaintiff known the truth  
15 about Defendant's "Made in U.S.A." representations, he would not have purchased  
16 the Products. As a result, Plaintiff suffered injury in fact and lost money at the time  
17 of purchase. Plaintiff will purchase epoxy and other adhesive products in the future,  
18 and he would purchase such a product manufactured by Defendant if it were possible  
19 to determine prior to purchase that the product was all or virtually all made in the  
20 U.S.A. Indeed, Plaintiff regularly visits stores where Defendant's Products are sold,  
21 but has been unable to determine whether the Products are all or virtually all Made  
22 in the U.S.A.

23 21. Defendant J-B Weld Company, LLC is a Georgia company whose  
24 headquarters is located at 100 Deforest Ave., East Hanover, NJ 07936. Defendant is  
25 a citizen of Georgia and New Jersey and is domiciled in New Jersey. J-B Weld  
26 company, LLC manufactures, advertises, markets, distributes, and/or sells the  
27



Products to tens of thousands of consumers in California and throughout the United States.

### CLASS DEFINITION AND ALLEGATIONS

22. Plaintiff brings this action on behalf of himself and all other similarly situated consumers pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

#### **Multi-State Class**

All consumers who, within the applicable statute of limitations period until the date notice is disseminated, purchased the Products in California, Florida, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, and Washington.<sup>2</sup>

Excluded from this Class are Defendant and its officers, directors, employees and those who purchased the Products for the purpose of resale.

23. In the alternative to a Multi-State Class, Plaintiff seeks certification of the following California-Only Class:

#### **California-Only Class**

All California consumers who within the applicable statute of limitations period until the date notice is disseminated, purchased the Products.

Excluded from this Class are Defendant and its officers, directors and employees, and those who purchased the Products for the purpose of resale.

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<sup>2</sup> The States in the Multistate Class are limited to those States with similar consumer fraud laws as applied to the facts of this case: California (Cal. Bus. & Prof. Code §17200, *et seq.*); Florida (Fla. Stat. §501.201, *et seq.*); Illinois (815 Ill. Comp. Stat. 502/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich. Comp. Laws §445.901, *et seq.*); Minnesota (Minn. Stat. §325F.67, *et seq.*); Missouri (Mo. Rev. Stat. 010, *et seq.*); New Jersey (N.J. Stat. §56:8-1, *et seq.*); New York (N.Y. Gen. Bus. Law §349, *et seq.*); and Washington (Wash. Rev. Code §19.86.010, *et seq.*). These statutes are referred to as “Similar Consumer Fraud Statutes.”



1       24.   **Numerosity.** The members of the Classes are so numerous that joinder  
2 of all members is impracticable. Plaintiff is informed and believes that the proposed  
3 Classes contain thousands of purchasers of the Products who have been damaged by  
4 Defendant's conduct as alleged herein. The precise number of Class members is  
5 unknown to Plaintiff.

6       25.   **Existence and Predominance of Common Questions of Law and**  
7 **Fact.** This action involves common questions of law and fact, which predominate  
8 over any questions affecting individual Class members. These common legal and  
9 factual questions include, but are not limited to, the following:

10       (a) whether Defendant's "Made in U.S.A." representations are false,  
11 misleading, or objectively reasonably likely to deceive;

12       (b) whether Defendant's alleged conduct is unlawful and constitutes  
13 violations of the laws asserted; and

14       (c) whether Plaintiff and Class members are entitled to appropriate  
15 remedies, including restitution, corrective advertising and injunctive relief.

16       26.   **Typicality.** Plaintiff's claims are typical of the claims of the members  
17 of the Classes because, *inter alia*, all Class members were injured through the  
18 uniform misconduct described above. Plaintiff is also advancing the same claims  
19 and legal theories on behalf of himself and all Class members.

20       27.   **Adequacy of Representation.** Plaintiff will fairly and adequately  
21 protect the interests of Class members. Plaintiff has retained counsel experienced in  
22 complex consumer class action litigation, and Plaintiff intends to prosecute this  
23 action vigorously. Plaintiff has no adverse or antagonistic interests to those of the  
24 Classes.

25       28.   **Superiority.** A class action is superior to all other available means for  
26 the fair and efficient adjudication of this controversy. The damages or other financial  
27 detriment suffered by individual Class members is relatively small compared to the

burden and expense that would be entailed by individual litigation of their claims against Defendant. It would thus be virtually impossible for members of the Classes, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

29. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf of the entire Classes, on grounds generally applicable to the entire Classes, to enjoin and prevent Defendant from engaging in the acts described and requiring Defendant to provide restitution to Plaintiff and Class members.

30. Unless a Class is certified, Defendant will retain monies received as a result of its conduct that were taken from Plaintiff and Class members.

31. Unless an injunction is issued, Defendant will continue to commit the violations alleged, and the members of the Classes and the general public will continue to be deceived.

## COUNT I

### **Violation of Business & Professions Code §17200, *et seq.* and Similar Consumer Fraud Statutes, *supra* note 2 (On Behalf of the Multi-State or California-Only Class)**

32. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

33. Plaintiff brings this claim individually and on behalf of the Classes.

1       34. As alleged herein, Plaintiff has suffered injury in fact and lost money or  
2 property at the time of purchase as a result of Defendant's conduct because he  
3 purchased Defendant's Products in reliance on the "Made in U.S.A." representations,  
4 but did not receive Products consistent with those representations.

5       35. The Unfair Competition Law, Business & Professions Code §17200, *et*  
6 *seq.* ("UCL") prohibits any "unlawful," "fraudulent," or "unfair" business act or  
7 practice and any false or misleading advertising. The Similar Consumer Fraud  
8 Statutes likewise prohibit the use of unfair or deceptive practices in the course of  
9 trade or commerce, and like the UCL are to be liberally construed.

10       36. By making the "Made in U.S.A." representations (which also constitute  
11 advertising within the meaning of § 17200), Defendant has engaged in "unlawful"  
12 business acts and practices in the course of conducting business because:

- 13       a. By representing that its Products are "Made in U.S.A.", Defendant has  
14 and continues to violate, *inter alia*, California Business & Professions  
15 Code § 17533.7, in that it is unlawful to sell in California products  
16 which contain the representation "Made in U.S.A." where any part  
17 thereof has been substantially made, manufactured, or produced outside  
18 the United States;
- 19       b. By claiming its Products are "Made in U.S.A." when they are not "all  
20 or virtually all" made in the U.S.A., Defendant has and continues to  
21 violate the FTC Act, including 15 U.S.C. §§ 45 and 45a;
- 22       c. By representing that its Products are "Made in U.S.A.", Defendant has  
23 and continues to violate the California Legal Remedies Act, Civil Code  
24 §§ 1750, *et seq.*, by violating Civ. Code § 1770(a)(4), as Defendant's  
25 acts and practices use deceptive representations or designations of  
26 geographic origin in connection with the sale of the Products;
- 27       d. By representing that its Products are "Made in U.S.A.", Defendant has

1 and continues to violate California Civil Code §§ 1572 and 1573, in that  
2 Defendant committed actual and constructive fraud; and

- 3 e. By representing that its Products are “Made in U.S.A.”, Defendant has  
4 and continues to violate California Civil Code §§ 1709 and 1711, in that  
5 Defendant willfully deceived Plaintiff and Class members with intent  
6 to induce them to alter their position to their injury.

7 37. Plaintiff reserves the right to allege other violations of law, which  
8 constitute other unlawful business acts or practices. Such conduct is ongoing and  
9 continues to this date.

10 38. Defendant also committed “unfair” business acts or practices in the  
11 course of conducting business in violation of the unfair business prong of Business  
12 & Professions Code § 17200, *et seq.* by engaging and continuing to engage in conduct  
13 that violates the legislatively declared policy of California Business & Professions  
14 Code § 17533.7 against selling products in California containing a “Made in U.S.A.”  
15 representation where any part thereof has been substantially made outside the U.S.  
16 Defendant has further engaged in conduct that violates the legislatively declared  
17 policy of the CLRA against using deceptive representations of national origin.  
18 Absent the disclosures detailed above, any justification for selling the Products with  
19 the Made in U.S.A. representations is outweighed by the gravity of the harm the sale  
20 of the Products causes, particularly because there were reasonable available  
21 alternatives to further Defendant’s legitimate business interest, such as a properly  
22 qualified U.S. origin claim. There is no societal benefit from false advertising, only  
23 harm to consumers and to Defendant’s competitors whose advertising must comply  
24 with the laws regulating U.S. origin claims. While Plaintiff and the public at large  
25 were and continue to be harmed, Defendant has been unjustly enriched by its false,  
26 misleading, and deceptive representations and material omissions. Because the  
27 utility of Defendant’s conduct (zero) is outweighed by the gravity of harm to Plaintiff,

1 consumers, and the competitive market, Defendant's conduct is "unfair" having  
2 offended an established public policy against engaging in unlawful, false, and  
3 misleading advertising, unfair competition, and deceptive conduct towards the  
4 general public. Further, Defendant engaged in immoral, unethical, oppressive, and  
5 unscrupulous activities that are substantially injurious to the public at large.

6 39. In the course of conducting business, Defendant also committed  
7 "fraudulent business act[s] or practices" and deceptive or misleading advertising by  
8 making the "Made in U.S.A." representations and omitting the material qualifying  
9 facts, which are false, misleading, and deceptive representations and omissions  
10 (which also constitutes advertising within the meaning of § 17200) having the  
11 tendency to deceive the general public.

12 40. Defendant's conduct has caused Plaintiff to suffer injury and the loss of  
13 money.

14 41. Unless restrained and enjoined, Defendant will continue to engage in  
15 the above described conduct. Accordingly, injunctive relief is appropriate.

16 42. Plaintiff, on behalf of himself, all others similarly situated, and the  
17 general public, seeks declaratory relief and an injunction prohibiting Defendant from  
18 continuing such practices, corrective advertising, restitution of the monies obtained  
19 from Plaintiff and Class members as a result of unfair competition, and all other relief  
20 this Court deems appropriate, consistent with Business & Professions Code § 17203  
21 and the Similar Consumer Fraud Statutes.

22  
23 **COUNT II**  
**Violations of the Consumers Legal Remedies Act – Civil Code § 1750 *et seq.***  
**(On Behalf of the California-Only Class)**

24 43. Plaintiff repeats and re-alleges the allegations contained in the  
25 paragraphs above, as if fully set forth herein.

26 44. Plaintiff brings this claim individually and on behalf of the California-  
27

1 Only Class.

2 45. This cause of action is brought pursuant to the Consumers Legal  
3 Remedies Act, California Civil Code § 1750, *et seq.* (the “Act”).

4 46. Plaintiff is a consumer as defined by California Civil Code § 1761(d).  
5 The Products are “goods” within the meaning of the Act.

6 47. Defendant violated and continues to violate the Act by engaging in the  
7 following practices proscribed by California Civil Code § 1770(a) in transactions  
8 with Plaintiff and the California-Only Class which were intended to result in, and did  
9 result in, the sale of the Products:

10 (4) Using deceptive representations or designations of geographic origin in  
11 connection with [its sale of the Products].

12 48. Pursuant to California Civil Code § 1782(d), Plaintiff and the  
13 California-Only Class seek a Court Order declaring Defendant to be in violation of  
14 the CLRA and enjoining the above-described wrongful acts and practices of  
15 Defendant.

16 49. Pursuant to § 1782 of the Act, Plaintiff notified Defendant in writing by  
17 certified mail of the particular violations of § 1770 of the Act and demanded that  
18 Defendant rectify the problems associated with the actions detailed above and give  
19 notice to all affected consumers of Defendant’s intent to so act. A copy of the letter  
20 is attached hereto as Exhibit B.

21 50. If Defendant fails to rectify or agree to rectify the problems associated  
22 with the actions detailed above and give notice to all affected consumers within 30  
23 days of the date of written notice pursuant to § 1782 of the Act, Plaintiff will amend  
24 this Complaint to add claims for actual, punitive, and statutory damages as  
25 appropriate.

26 51. Pursuant to § 1780 (d) of the Act, attached hereto as Exhibit C is the  
27 affidavit showing that this action has been commenced in the proper forum.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Classes as requested herein;
- B. Issuing an order declaring that Defendant is in violation of the UCL and CLRA;
- C. Enjoining Defendant's conduct and ordering Defendant to engage in a corrective advertising campaign;
- D. Awarding restitution of Defendant's revenues to Plaintiff and the proposed Class members;
- E. Awarding attorneys' fees and costs; and
- F. Providing such further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: April 3, 2019

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.

/s/Patricia N. Syverson

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Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on April 3, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic mail notice list

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 3, 2019.

/s/Patricia N. Syverson  
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